

- 1 -

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

934 CIVIL APPLICATION NO.4568 OF 2019  
IN FA/826/2019 WITH CA/13398/2018 IN FA/826/2019

SANJAY BHAGWAN @ BABAN KHAIRNAR  
VERSUS

THE NEW INDIA ASSURANCE CO. LTD., THROUGH ITS AUTHORIZED  
SIGNATORY, A.P. KULKARNI AND ANOTHER

...

Advocate for Applicant : Shri Suryawanshi Kamalakar J.  
Advocate for Respondent no.1 : Shri M. M. Ambhore  
None present for respondent no.2.

**CORAM: V.L. ACHLIYA, J.**

**DATE: 03.04.2019**

**PER COURT :**

1] The applicant – claimant has filed this application for withdrawal of amount of Rs.6,35,638/- deposited by the respondent no.1 – insurance company in terms of the award passed in the matter.

2] Heard learned counsel for the applicant and the respondent no.1 – insurance company. None present for the respondent no.2. Perused the judgment and award passed by the Tribunal as well as the grounds raised in the appeal.

3] In brief, it is the contention of learned counsel for the respondent no.1 – insurance insurance company that the claim is not maintainable as the injuries sustained by the applicant are caused due to his own

- 2 -

negligence and not as a result of injuries sustained in the accident. By referring the facts of the case, the learned counsel submits that the injuries as sustained cannot be claimed to be caused in a motor vehicle accident so as to claim compensation u/s 166 as well as u/s 163-A of the Motor Vehicles Act. In the light of challenges raised in the appeal, the learned counsel submits that in case the applicant is permitted to withdraw the amount, it will be difficult to recover the amount from him in the event the appeal is allowed or award is modified.

4] Having regard to the submissions advanced and the challenge raised in the appeal, I am of the view that an arguable case has been made out to entertain the appeal. In that view, passing of following order would meet the ends of justice.

**O R D E R**

A] Subject to outcome of the appeal, the applicant – claimant is permitted to withdraw amount of Rs.1,00,000/- (rupees one lakh only) on furnishing undertaking to the satisfaction of the Registrar (Judicial) to the effect that

- 3 -

in the event the appeal is allowed or award is modified or set aside and the applicant is required to re-deposit the amount withdrawn, the applicant shall deposit the same within a period of eight weeks from the date of such order.

B] After making payment of Rs.1,00,000/-, the balance amount be invested in the fixed deposit initially for a period of 28 months with any Nationalized bank.

C] The interest accrued over the amount invested in the bank be paid to the applicant after interval of every three months till disposal of the appeal subject to undertaking that in the event the award modified or set aside, the applicant shall re-deposit the amount received towards interest in the Court.

D] The application is disposed of in above terms.

**(V.L. ACHLIYA, J.)**